MAR 29 1994

No. 93-1402

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

WALTER P. SOLICK,

v. *Petitioner,*

PARIS ACCESSORIES, INC.,

Respondent.

RESPONDENT PARIS ACCESSORIES, INC.'S MOTION FOR DAMAGES

Respondent Paris Accessories, Inc., through its counsel, respectfully moves the Court for damages in the above-entitled case pursuant to Rule 42.2 of the Rules of the Supreme Court of the United States because Petitioner Walter P. Solick's petition for writ of certiorari is frivolous.

1. On March 8, 1994, Petitioner Walter P. Solick ("Solick") filed a petition for writ of certiorari ("Petition") in the Supreme Court of the United States. Solick seeks review of the determination by the United States Court of Appeals for the Third Circuit, which is not published, affirming an award of summary judgment to Respondent Paris Accessories, Inc.

2. The only reason relied upon by Solick for allowance of a writ of certiorari is "that a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter as to call for an

exercise of this Honorable Court's power of supervision." Petition, p. 8. Solick has not identified any case in conflict nor has Solick identified any case in the entire petition which is issued by another court of appeals other than the Third Circuit.[1] Accordingly, the sole ground advanced by Solick for the grant of summary judgment is frivolous and is unsupported by any law or argument.

3. Solick also has misrepresented the record in this case. In his petition, Solick asserts that his complaint stated:

> 6. At all times herein relevant, Defendant failed to post the notice (required under ADEA), informing employees, including Plaintiff, of their rights under ADEA. (OR Defendant buried the notice on cluttered bulletin boards making it impossible for Plaintiff to notice of [sic] read any notice.)

Petition, p. 12. The phrase "(OR Defendant buried the notice on cluttered bulletin boards making it impossible for Plaintiff to notice of [sic] read any notice" was not contained in Solick's complaint and was added to the petition for writ of certiorari. Inclusion of this purported "quotation" from the complaint misrepresents the facts.

---

[1] Solick cites to Miller v. Intern. Tel. & Tel. Corp., 755 F.2d 20 (2d Cir. 1985). Solick incorrectly cites the Miller case as a Third Circuit case. Petition, pp. v, 17. Solick incorrectly cited this case in his submission to the United States Court of Appeals for the Third Circuit and this error was identified by Paris in its brief, yet Solick continues to cite this case incorrectly. In any event, Solick does not argue in any way that Miller is inconsistent with the Third Circuit's determination. Indeed, in Miller, the Second Circuit affirmed the grant of summary judgment to an employer because the charge filed with the Equal Employment Opportunity Commission was untimely.

4. Petitioner's petition for writ of certiorari is replete with errors and incorrect citations. Some examples are:

PAGE	LINE	TEXT	CORRECTED TEXT
v	3	429 U.S. 821	439 U.S. 821
v	4	554 F.Supp 1187	554 F.Supp 1178
v	8	Marlsbay	Malsbary
v	9	(3d Cir, 1980)	(3d Cir. 1988)
v	12	Amateck	Ametek
v	21	(3d Cir, 1985)	(2d Cir. 1985)
vi	4	Shafer	Schafer
6a	16	Byars	Byers
7a	2	could	should
7a	15	rules	ruled
9a	11	negligence	negligent
13a	4	Paries	Paris

5. With the exception of changing the word "Appellant" to "Petitioner," Solick has copied the brief for appellant which was submitted to the United States Court of Appeals for the Third Circuit, virtually word for word, and submitted this brief to this Court as his petition for writ of certiorari. The fact that the brief was copied is readily apparent from the text of the petition. For example, Solick makes reference and refers this Court to "Appellee's District Court brief," and to "Petitioner's Complaint," which are not part of the record before this Court. Petition, pp. 15-16. Then, Solick merely adds the following at the conclusion of his Petition: "Petitioner, therefore, respectfully seeks review by this Honorable Court of the

Appellant [sic] decision affirming the grant of summary judgment."

6. Rule 42.2 of the Rules of the Supreme Court permits the award of damages when a petition for a writ of certiorari is frivolous. Damages may be awarded against the petitioner or against the party's attorney or against both. While the Court rarely has imposed this kind of sanction, it has invoked this rule where appropriate. Roe v. Kansas, 278 U.S. 191, 193 (1929) ($200.00 penalty for filing "frivolous" writ of error); Mississippi Central R. Co. v. Smith, 299 U.S. 518 (1936) ($500.00 damages assessed against appellant whose appeal was dismissed for want of jurisdiction); Bohn v. Bohn, 316 U.S. 646, 647 (1942) (damages awarded because appeal was frivolous); Tatum v. Regents of the University of Nebraska-Lincoln, 462 U.S. 1117 (1983) (damages awarded where a petition for certiorari was denied).

7. Petitioner has grossly abused the opportunity to seek review from this Court. Solick's counsel has submitted a petition for writ of certiorari which is wholly meritless. Solick has not advanced any reason why the petition should be granted by the Court and submitted a petition which is replete with errors, misrepresentations, and inappropriate references.

8. Petitioner has incurred counsel fees and printing costs in excess of One Thousand Dollars ($1,000.00) in responding to this wholly frivolous petition for writ of certiorari.

WHEREFORE, Respondent Paris Accessories, Inc. prays that this Court impose damages against Walter P. Solick, or against Solick's attorney, or against both, in the amount of One Thousand Dollars ($1,000.00).

Respectfully submitted,

MARTIN J. SOBOL, ESQUIRE*
STEVEN K. LUDWIG, ESQUIRE
FOX, ROTHSCHILD, O'BRIEN & FRANKEL
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2000

Attorneys for Respondent
Paris Accessories, Inc.

*Counsel of Record

Dated: March 29, 1994